

Mark D. Flynn

July 29, 2005

Romulus, Michigan

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IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE) MDL No. 1456

) Civil Action

THIS DOCUMENT RELATES TO) 01-CV-12257-PBS

ALL CLASS ACTIONS) Judge Patti B.

) Satis

The Deposition of MARK DAVID FLYNN,

Taken at 31500 Wick Road,

Doubletree Hotel, Superior Room,

Romulus, Michigan,

Commencing at 9:03 a.m.,

Friday, July 29, 2005,

Before Cynthia A. Chyla, CSR 0092.

Henderson Legal Services
(202) 220-4158

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1 A. Oncology, hepatology, rheumatology.

2 Q. Can you give me the names of perhaps five of
3 your, what you would call your biggest, for lack of a
4 better description, biggest or your better accounts or
5 active, however you want to characterize it? Do you
6 understand what I'm saying?

7 A. I'm not sure I understand your question. Is
8 this strictly to specialty --

9 Q. Yes, specialty pharmacy.

10 A. Diplomat Pharmacy in Flint, Michigan.
11 Peninsula Pharmacy, Thompson Pharmacy.

12 Q. And Peninsula, could you give me -- are they
13 in one town?

14 A. They are in Marquette, Michigan.

15 Q. Thank you. I'm sorry. And then the --

16 A. Thompson, Traverse City, Michigan. Oh,
17 Apothecary Shop, Midland, Michigan.

18 Q. Now, you have used the phrase that these
19 were somewhat specialty pharmacies. Of these four,
20 those are what you have described as specialty
21 pharmacies?

22 A. Yes.

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1 Q. Do you call on other or nonspecialty
2 pharmacies or general pharmacists?

3 A. Very rarely.

4 Q. What would be the reason or occasion where
5 you would call on other pharmacies?

6 A. Where either clinics or physician offices
7 are telling me they utilize that particular store.

8 Q. On -- calling on the doctors and the clinics
9 that use injectable or physician-administered drugs and
10 pharmacies, how and to what extent, if you can describe
11 it, do you provide them pricing information?

12 A. Rarely, if -- only if asked.

13 Q. And, what kind of information would you
14 provide to them on those occasions?

15 A. Typically the questions would be
16 administration, things like the J code for Intron-A,
17 and then the list price in the Schering-Plough price
18 book.

19 Q. Are there -- do you ever engage your
20 customers in discussions regarding spread?

21 A. No.

22 Q. Do you understand what spread is? Or what

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1 is your understanding of what spread is relative to the
2 sales and purchase and reimbursement?

3 MS. MAYER: And, I'm just going to
4 caution the witness that if you have an understanding
5 that is independent of conversations with counsel,
6 you're free to share that. You can't share any
7 understanding you have based solely on conversations
8 with counsel.

9 A. Excluding those conversations, my
10 understanding of your use of the term spread would be
11 the difference between acquisition price and
12 reimbursement level.

13 BY MR. McNEELY:

14 Q. Okay. And, for your eight years' experience
15 as an oncology rep calling on doctors and pharmacies,
16 you understand that that is an important issue in those
17 clinics and pharmacies; is that correct?

18 MS. MAYER: Objection.

19 A. In some of my offices, it's considered
20 important.

21 BY MR. McNEELY:

22 Q. Okay. At this point, I'm going to hand you

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1 A. I don't know.

2 Q. How is it that you gave the information
3 about Caremark to Tammy in this particular call, or why
4 would you give that information?

5 A. I would give Tammy that information on
6 Caremark because an individual patient is having a
7 problem with Temodar. This patient typically diagnosed
8 with a brain tumor. Average median survival for that
9 patient, depending on the type of brain tumor, could be
10 as little as nine months. And, having that patient
11 have difficulty and having that patient or their
12 support person run around trying to find resources for
13 a prescription, that's a pretty tough way to spend your
14 time when you've been told that news.

15 Q. Does Schering-Plough train or give you
16 information on such specialty pharmacies as Caremark?

17 A. Yes.

18 Q. How do they do that?

19 A. Written materials and verbal discussions.

20 Q. Would that be the same thing true about
21 Curascript, do you provide information relative to
22 Curascript to any of the customers that you call on?

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1 A. Yes.

2 Q. Now, the records or documents, marketing
3 material that you have at your office or in your
4 storage building at home, would that also include any
5 of your training manuals that you received from
6 Schering-Plough?

7 A. Yes.

8 Q. Would those training manuals go back to your
9 initial training back in May of 1997?

10 A. No.

11 Q. How far would they go back?

12 A. I cannot recall the exact date. Early '02,
13 approximate. Early '02 forward.

14 Q. And, what would be the dates or dating on
15 the marketing material that you have at your office at
16 your house and in storage in your storage shed?

17 A. Approximately the beginning of 2002 to
18 current.

19 Q. And, what drugs would that cover, the
20 marketing material that you have?

21 A. That would be for Temodar and Intron-A.

22 Q. And, would any of that marketing material

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1 include comparisons on pricing and reimbursement
2 between Temodar and Intron-A with any of its
3 competitors in the market?

4 A. No.

5 MS. MAYER: Objection.

6 BY MR. McNEELY:

7 Q. Have you ever been provided material on
8 comparisons between Schering-Plough products and your
9 competitors relative to pricing?

10 MS. MAYER: Objection.

11 A. No.

12 BY MR. McNEELY:

13 Q. Have you ever been provided by
14 Schering-Plough any materials, documents, charts or
15 anything of that nature showing the comparisons of
16 reimbursement between Schering-Plough products that you
17 sell and the competitor products?

18 MS. MAYER: Objection.

19 A. No.

20 BY MR. McNEELY:

21 Q. As a part of providing information to any of
22 your customers from red book material, have you

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1 provided data or information relative to any of your
2 competitors?

3 A. No.

4 Q. Since you joined Schering-Plough in May of
5 1997, have you received instructions from
6 Schering-Plough for the destruction of any of the
7 documents or materials that they had provided to you?

8 A. No.

9 Q. What is, to your knowledge, the document
10 retention policy of Schering-Plough relative to the
11 materials that they provide to you?

12 A. I'd like to go back to the last question,
13 please.

14 Q. Okay.

15 A. Can you restate that question for me.

16 MR. McNEELY: I'm going to ask the
17 court reporter to read that back.

18 (Record repeated as requested)

19 A. The answer to that question -- the correct
20 answer to that question is yes.

21 BY MR. McNEELY:

22 Q. And, tell me on what occasions have you

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1 received such instructions?

2 A. Cannot give you specific dates. There would
3 be periodic typical mailings or e-mail notices or both
4 listing sales literature numbers referring to specific
5 pieces telling you to destroy those particular pieces,
6 and this was prior to '02.

7 Q. As part of that process of notifying you to
8 destroy certain pieces of literature --

9 A. Um-hum.

10 Q. -- were you also required to fill out a
11 compliance form and return that to Schering-Plough?

12 A. Yes.

13 Q. And, have you maintained copies of those
14 compliance forms that you've sent back to
15 Schering-Plough personally in your office?

16 A. I don't know.

17 Q. Has there ever been a time when you received
18 instructions to destroy any records or materials from
19 Schering-Plough where a compliance sheet or record by
20 you was not filled out?

21 A. I believe all the notices that I received
22 included the requirement of my signature on documents